

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

PLAYA MAREL, P.M., S.A., et al.,

Case No. C-3-06-366

Plaintiffs,

-vs-

Judge Thomas M. Rose

LKS ACQUISITIONS, INC., et al.,

Defendants.

**ENTRY AND ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS
COUNTS II AND III OF THEIR VERIFIED COMPLAINT WITHOUT
PREJUDICE (Doc. #59) AND TERMINATING THE CASE**

Now before the Court is Plaintiffs' Motion To Dismiss Counts Two and Three of their Verified Complaint Without Prejudice. (Doc. #59). The Defendants do not oppose this motion and request that the Court, pursuant to Fed. R. Civ. P. 58(d), enter a separate judgment stating that all claims in the action have been dismissed or appropriate relief granted. (Doc. #60).

On November 7, 2006, the Plaintiffs filed a Verified Complaint in the Montgomery County, Ohio Court of Common Pleas. The Verified Complaint was subsequently removed to this Court.

Count I of the Verified Complaint is for a declaratory judgment, Count II is for tortious interference with a contractual relationship, and Count III is for tortious interference with a business relationship. The Plaintiffs sought an ex parte temporary restraining order, a temporary restraining order and a preliminary injunction in regard to Counts II and III.

On November 6, 2007, this Court granted summary judgment to the Plaintiffs on Count I of their Verified Complaint. (Doc. #58.) The Plaintiffs now seek to dismiss Counts II and III without prejudice.

On March 23, 2007, the Defendants filed an Amended Answer and Counterclaim under seal. (Doc. # 29.) Count One of Defendants' Amended Counterclaim was for a declaratory judgment, Counts Two and Three were for breach of contract, Count Four was for unjust enrichment, Count Five was for promissory estoppel, Count Six was for fraud and Count Seven was for a declaratory judgment.

Pursuant to a motion to dismiss, Counts One through Six of Defendants' Amended Counterclaims were dismissed for failure to state a claim upon which relief may be granted. (Doc. # 49.) Pursuant to a motion for summary judgment, the Plaintiffs were granted judgment as a matter of law on Count Seven of Defendants' Amended Counterclaim. (Doc. # 58.) Therefore, all of the counterclaims have been adjudicated and the only claims remaining to be adjudicated are Counts II and III of Plaintiffs' Verified Complaint.

Plaintiffs now seek to dismiss Counts II and III of their Verified Complaint without prejudice. The Defendants do not object and want to be sure that they are not barred from appealing prior orders of this Court.

There is no evidence that the Defendants would suffer a "plain legal prejudice" by dismissal of Counts II and III of Plaintiffs' Verified Complaint. Therefore, pursuant to Fed. R. Civ. P. 41(a)(2), Counts II and III of Plaintiffs' Verified Complaint are dismissed without prejudice.

The granting of Plaintiffs' Motion To Dismiss Counts II and III Without Prejudice imparts finality to this Court's earlier orders. *See Hicks v. NLO, Inc.*, 825 F.2d 118 (6th Cir. 1987). All claims and counterclaims have been dismissed or appropriate relief granted. Therefore, the captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and ORDERED in Dayton, Ohio, this Seventeenth day of December, 2007.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record